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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,426

08/05/2008

Dina L. Richman

60336-USA

4708

7590

10/11/2011

John M Sheehan
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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

10/11/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,426	Applicant(s) RICHMAN ET AL.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 6, 11, 16 and 27-33 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 6, 11, 16 and 27-33 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,6,11,16, & 27-33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over SEMBO 6555092 in view of SELBY et al US 20040053786A1 and LAHM et al US 20040198984A1

Pyrethroids and neonicotinosis (col 2, lines 32-50) of the instant are taught as pesticides combinable with nitroguanidine to control household pests-clothes moths, mosquitoes, flies, cockroach, ants, wasps, termites (col 3, line 50-col 4, lines 26). One of ordinary skill in the art would find it obvious to include additional insecticides in the range of the rate of Sembo's active, 0.01-10% (col. 1, lines 42-43).

A limited number of insecticides are shown, and it would be within the purview of the pesticide applicator to test the combinations, inclusive of the instant, in order to optimize effects.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the SEMBO modified as desired to increase reduced toxicity to handlers & increased toxicity to pests, by optimizing the mix of pesticides to be used.

Testing of the likely combinations, of a specific number of actives, is seen as standard operating procedure to maximize effects, in consideration of the 2007 supreme court decision in KSR V TELEFLEX @ 82 USPQ 2d @ 1385.

SELBY provides guidance; household pests [0002] are controlled with mixes of pesticides inclusive of bifenthrin, imidacloprid, & thiamethoxam[0184] & claim 12, using 0.01-5% of actives[0190], The required amounts determinable by the skilled artisan[0193].

LAHM also provides guidance; household pests [0002,00236] of the instant are controlled with mixes of pesticides inclusive of bifenthrin, imidacloprid, clothianidin & thiamethoxam[0238] using 0.01-5% of actives[0245], The required amounts determinable by the skilled artisan[0247].

Modification of the compositions to apply to control the desired pest are seen as within the purview of the pesticide applicator & formulator to determine given the prior art showings of the use of pesticide mixes of a specific number of actives. The particular active combinations & concentrations are then a matter of testing to determine the optimum combination to achieve desired effect on the particular species of concern.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed,

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and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

Note that the instant application provides data showing imidacloprid may have a protective effect with bifenthrin; see Table 3; American cockroach is 70% mortality at 50ppm bifenthrin after two days but 200ppm imidacloprid and bifenthrin provides only 75% mortality. This is not true, however of foreign cockroaches. We see the same effects on house fly; 97% mortality from 100ppm of imidacloprid is tempered by adding bifenthrin.

Thiamethoxam, on the other hand, is protective of foreign cockroaches (Table 10) but not American (Table 9). Clothianidin seems to be either cockroach except for additive effects-50-200 results in increased mortality of American (Table 14) but not of oriental- no increase is seen with either active or increased amounts.

However, clothianidin is effective with bifenthrin on house fly. Their results and efficacy depend not only on the combination, and concentration, but also on the target pest. These findings support the expectation of one in the art to apply the teachings of the cited prior art in determining the optimal mix and concentration for the pest species tested.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is (571)272-0619. The examiner can normally be reached on Tuesday-Friday, 7:15AM to 5:45 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/
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